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DE RUEHOT #0696/01 2512015  
ZNR UUUUU ZZH  
P 082015Z SEP 09 ZDK  
FM AMEMBASSY OTTAWA  
TO RUEHC/SECSTATE WASHDC PRIORITY 9820  
INFO RUCNCAN/ALL CANADIAN POSTS COLLECTIVE  
RUEHZJ/HUMAN RIGHTS COUNCIL COLLECTIVE

UNCLAS SECTION 01 OF 03 OTTAWA 000696

SENSITIVE  
SIPDIS

STATE FOR DRL/AWH AND WHA/CAN

E.O. 12958: N/A  
TAGS: [PHUM](#) [PGOV](#) [CA](#)  
SUBJECT: HUMAN RIGHTS COMMISSIONS: A LOW PROFILE, AT LEAST  
UNTIL THE OLYMPICS

REF: OTTAWA 695

1. (SBU) Summary: Canada's federal and provincial human rights commissions (HRCs) have maintained a lower public profile this year than in 2008. They could, however, face a sharp increase in complaints in 2010 due to new Vancouver city bylaws enacted for the upcoming Winter Olympic Games. The extension of the Canadian Human Rights Act to Canada's aboriginal population in June 2011 is also likely to generate more cases. Ontario, British Columbia, and Alberta HRC current dockets include complaints against freedoms of speech and of religion and the right to privacy in criminal court cases. The Canadian HRC (CHRC) is now accepting complaints against the federal government from aboriginals subject to the Indian Act. Ontario and Alberta have established independent human rights tribunals as a means of appeal of provincial HRC rulings, creating judicial processes for plaintiffs and defendants. End summary.

2. (SBU) At the end of August U.S. Embassy Ottawa hosted Consulates General Vancouver, Calgary, Toronto, and Halifax and WHA/CAN for the Mission Canada reporting officers digital video conference in preparation for the 2009 Human Rights Report.

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VANCOUVER - OLYMPIC-SIZED LIMITS ON FREEDOM OF EXPRESSION  
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3. (SBU) The International Olympic Committee (IOC) requires regulations that have the effect of limiting freedom of expression at host venues during the Olympics. These regulations are primarily directed at commercial speech to protect exclusive advertising rights of sponsors, but they also restrict general protests to specific zoned areas. In response to IOC's edict, the Vancouver City Council passed bylaws, to be implemented in January 2010, restricting the distribution of leaflets and other public speech at the sporting venues and also for the first time along major routes to the venues and at principal hotels. City officials have not yet announced the location and number of designated protest zones but have promised that they will be visible to cameras. Public attention to the new regulations was scant until they were passed as the city did not allow significant public consultation. An Olympics watchdog group, The Impact on Communities Coalition, has filed a protest with the United Nations asking that the UN send human rights observers to the Vancouver games to "ensure Canada's high standards aren't breached." While the British Columbia HRC has not received any complaints related to the Olympics, the strong activist community in Vancouver makes it likely that numerous complaints will be filed once the new laws are enacted and following the conclusion of the games.

4. (SBU) Royal Canadian Mounted Police (RCMP) officials and non-governmental organizations (NGOs) in British Columbia

differ widely in their estimates of the potential for an increase in trafficking in sex workers during the games (ref a). NGOs claim they are already seeing signs of increased sex work based on the rise in ads for personal services. The RCMP, using a far more restrictive definition of a "trafficked" person, says the problem is not significant.

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TORONTO  
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15. (SBU) The Ontario HRC has taken an opposing stand against the Canadian Council of Muslim Women regarding the right of a woman to wear a full facial cover or "niqab" when testifying against a defendant in a criminal court. In a pending decision, the judge in a sexual assault trial is weighing whether the defendant's right to confront his accuser is infringed when the accuser covers her face, or if the victim's right to religious freedom is abridged by being forced to remove the niqab. The judge has signaled that the strength of the victim's beliefs about the niqab as it relates to her faith will be a central issue. In May an Ontario Superior Court judge ruled Muslim women have no blanket right to wear a veil while testifying in court. However, the same judge concluded individual judges should decide on an ad hoc basis whether to permit Muslim women to testify under veil. The Ontario HRC argued that the defendant's rights are being violated when they cannot confront their accusers. The HRC further noted that the Canadian Council of Muslim Women has stated that the niqab is not necessary to Islam and that the woman can remove it for testimony.

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16. (SBU) The Ontario HRC is also considering complaints of violations to the right to privacy in two separate instances where prosecutors asked provincial police to do background checks on potential criminal trial jurors, which the complainants claimed was broader than the standard criminal records check. The HRC is concerned about the possibility of discrimination against people with mental health issues as police record checks can reveal personal information about an individual's mental health record and non-criminal contact with police. Judges have declared three mistrials due to improper juror selection based on the broad background checks.

17. (SBU) In June 2008, the Ontario government created the Ontario Human Rights Tribunal. The Tribunal now makes rulings on complaints while the Ontario HRC can only investigate cases. There has been little public comment on the creation of the Tribunal, possibly due to the lack of high profile cases to date.

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CALGARY  
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18. (SBU) In January 2009, the Sheldon Chumir Foundation for Ethics in Leadership released a report on the Alberta HRC criticizing its lack of leadership and visibility on human rights issues. As a result of the report and other public criticism, the Alberta HRC created a separate, publicly funded human rights tribunal which automatically hears all appeals from the HRC. The Alberta minister for Culture and Community Spirit has taken the lead in reforming the Alberta HRC in direct response to the Chumir report. The Chumir Foundation is a private, non-profit organization based in Calgary whose directors are influential members of the business community.

19. (SBU) The Rev. Stephen Boissoin and the Concerned Christian Coalition have filed an appeal to the court ruling that they must publish an apology for disparaging comments about homosexuals. The Alberta provincial court has set the

hearing date in September. At issue is the balance of conflicting rights of a protected group against hate speech and freedom of the press in the forced publication of an apology.

¶10. (SBU) At a new trial in February, a provincial court judge acquitted a First Nations leader in Saskatchewan of hate speech ruling that he did not willfully intend to incite hatred in his remarks. In July, a Saskatchewan provincial court upheld the November 2008 ruling of the Saskatchewan HRC sanctioning a provincial marriage commissioner for refusing to conduct same-sex marriages. The commissioner had argued that the law violated his Charter right to freedom of religion, but the court determined that he was obliged to discharge his public responsibilities in accordance with the law.

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OTTAWA  
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¶11. (SBU) In June 2008, Parliament repealed Section 67 of the Canadian Human Rights Act, ending the exclusion of First Nations peoples from the protections of the Act. Effective immediately, the CHRC can accept complaints against the federal government from aboriginals subject to the Indian Act that were previously exempted. The bill provides for a three-year transition period before complaints can be received against First Nations authorities. CHRC told poloffs that they do not know how large an increase in complaints to expect after June 2011 but that they are hoping their efforts to educate First Nations Bands during the transition will reduce discriminatory practices now in effect. Sherry Helganson, Director of the National Aboriginal Initiative, the CHRC's branch leading the QAboriginal Initiative, the CHRC's branch leading the transition period's programs, said she expects the highest number of complaints to be focused on (1) eligibility for status as a First Nations person (mostly related to women who live off-reserve with non-aboriginal husbands); (2) access to educational services for children who live off-reserve, many of whom were forced to leave the reserve due to domestic violence; and (3) access to health services for those who live off-reserve. As of December 2008, she said the CHRC had received approximately 20 complaints in those three areas.

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HALIFAX

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¶12. (SBU) HRCs in the Atlantic provinces do not receive a high volume of complaints. The majority of cases deal with discrimination in employment or disability issues.

¶13. (SBU) Comment: Following a spate of high profile cases in 2007 and 2008, the provincial HRCs have not been in the public or media eye in 2009 to the same extent. While there is no indication of a drop in complaints submitted to the HRCs, the creation of separate human rights tribunals in Ontario and Alberta suggests that the HRCs and provincial governments are seeking to create a more streamlined and rigorous approach to rulings. On the federal level, the CHRC is still tentatively feeling its way through the thickets of the repeal of Section 67, balancing the historical group independence of First Nations bands to monitor their own internal affairs with the federal duty to protect each individual Canadian's human rights. End Comment.

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BREESE